

BORA LASKIN LAW LIBRARY



3 1761 10084294 7

FACULTY OF LAW  
UNIVERSITY OF TORONTO

**MATERIALS ON CONFLICT OF LAWS**

**January, 1992**

[v. 17]

John Swan

Aird & Berlis  
Toronto

Vaughan Black

Dalhousie University  
Halifax

BORA LASKIN LAW LIBRARY

JAN 7 1992

FACULTY OF LAW  
UNIVERSITY OF TORONTO

BORA LASKIN LAW LIBRARY  
UNIVERSITY OF TORONTO

FACULTY OF LAW  
UNIVERSITY OF TORONTO

**MATERIALS ON CONFLICT OF LAWS**

**January, 1992**

[vii]

John Swan

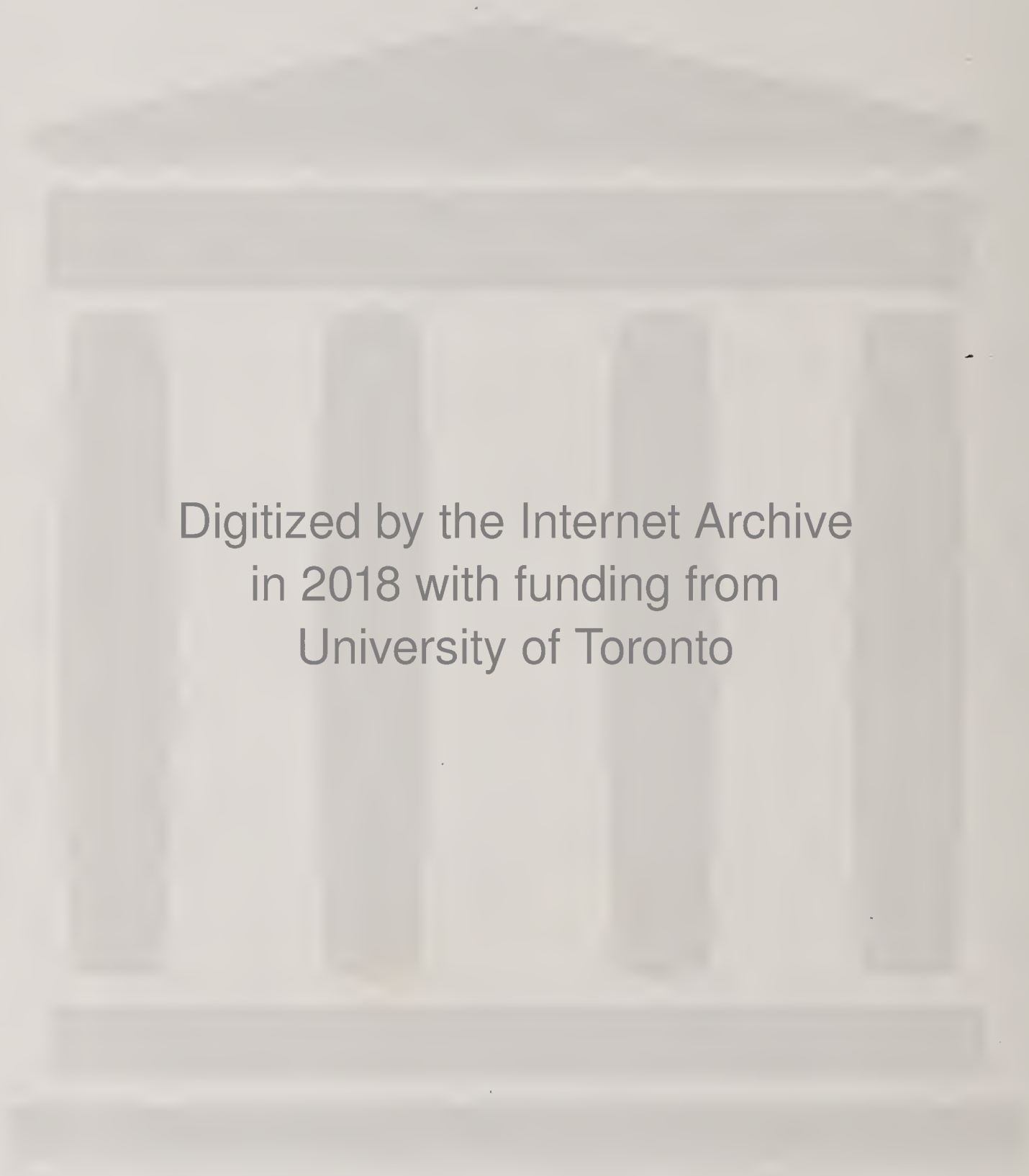
Aird & Berlis  
Toronto

Vaughan Black

Dalhousie University  
Halifax

We are grateful for the help that has been given over the years by Alice Ng, who worked on revisions of these materials for thirteen years. That she is now in business for herself may say something about the stamina required in that task. We are also grateful for the help of Nina Lester, Bill Abbott and of many other students over the past several years in the constant revisions in the organization and text of these materials.

**These materials are for use by students in the Faculty of Law, University of Toronto, and Dalhousie Law School and by students in other universities to which these materials have been distributed. The materials are not otherwise for publication or commercial sale. All rights reserved.**



Digitized by the Internet Archive  
in 2018 with funding from  
University of Toronto

## Table of Contents

### INTRODUCTION

1.	<b>The Questions Central to the Conflict of Laws</b> .....	1
2.	<b>Note on the Materials</b> .....	4
3.	<b>The Purpose of the Materials</b> .....	7
4.	<b>Note on Uniform Laws</b> .....	9
5.	<b>What is a "Conflicts" Problem?</b> .....	13
	Pleadings; Statement of Claim .....	14
	Statement of Defence .....	15
	Reply .....	15

### PART A

#### I CHOICE OF LAW

##### Chapter One

1.	<b>Introduction</b> .....	17
2.	<b>The Choice of Law Process</b> .....	18
3.	<b>The Structure of Conflicts Analysis</b> .....	20
	Table 1 .....	23

##### Chapter 2

##### Choice of Law in Contract

<b>A Note on the Historical Development of the Choice of Law Process</b> .....	27
<i>Etler v. Kertesz</i> .....	32
Notes .....	38
<i>The Assunzione</i> .....	40
Questions and Notes .....	44
<i>Amin Rasheed Shipping Corporation v. Kuwait Insurance Co.</i> .....	47
Notes .....	56



<b>The Effect of an Express Choice of Law Clause</b> .....	58
<i>Vita Foods Products Inc. v. Ubus Shipping Co. Ltd.</i> .....	58
Questions and Notes .....	63
<i>International Sale of Goods Act, 1988</i> .....	67
<b>Some Further Problems of Choice of Law in Contracts</b> .....	68
<i>Ross v. McMullen</i> .....	70
Questions and Notes .....	74
<b>Review and Further Examination of Typical Cases</b> .....	77
<i>Bondholders Securities Corp. v. Manville</i> .....	79
Notes .....	80
<i>Charron v. Montreal Trust</i> .....	81
<i>Imperial Life Assurance Co. v. Colmenares</i> .....	84
Notes .....	89
<i>Ralli Brothers v. Compania Naviera Sota y Aznar</i> .....	92
Notes and Questions .....	95

### Chapter 3

<b>Transaction Opinions</b> .....	51
-----------------------------------	----

### Chapter 4

#### Choice of Law in Torts

<b>Introduction</b> .....	109
<b>A Summary of the Development of Modern Tort Choice of Law Rules</b> .....	111
The "First Rule" in <i>Phillips v. Eyre</i> .....	114
The "Second Rule" in <i>Phillips v. Eyre</i> .....	117
<i>Chaplin v. Boys</i> .....	118
Questions and Notes .....	131
<i>McElroy v. McAllister</i> .....	131
Notes and Questions .....	133
<i>McLean v. Pettigrew</i> .....	133

Notes .....	137
<i>O'Connor v. Wray</i> .....	138
Notes .....	144
<i>Grimes v. Cloutier</i> .....	147
<i>Prefontaine v. Frizzle; Cuddihey v. Robinson</i> .....	159
Notes and Questions .....	162
<i>Draft Foreign Torts Act</i> .....	116
<b>The Insurance Context</b> .....	164

## Chapter 5

### Escape Devices

1.	<b>Introduction</b> .....	167
2.	<b>The Substance/Procedure Distinction</b> .....	167
	Table 2 .....	168
	<i>Toronto-Dominion Bank v. Martin Estate</i> .....	170
	<i>Alberta Treasury Branches v. Granoff</i> .....	174
	Notes and Questions .....	177
	<i>Block Bros. Realty Ltd. v. Mollard &amp; Detra Holdings Ltd.</i> .....	178
	Questions and Notes .....	183
	<i>J. D'Almeida Araujo v. Sir Frederick Becker &amp; Co. Ltd.</i> .....	186
	Questions and Notes .....	189
3.	<b>Renvoi</b> .....	192
	<i>Re Annesley</i> .....	195
	Notes and Questions .....	197
4.	<b>Characterization</b> .....	198
	<i>Haumschild v. Continental Casualty Company</i> .....	200
	<i>Levy v. Daniels' U-Drive Auto Renting Co.</i> .....	204
	Notes and Questions .....	206

## II JURISDICTION, RECOGNITION AND ENFORCEMENT

### Chapter 6

#### Jurisdiction of the Ontario Court

1.	<b>Introduction</b>	209
2.	<b>Rules Governing the Taking of Jurisdiction</b>	212
(a)	Rules Excluding the Jurisdiction of the Courts	213
	(i) Personal Exclusions	213
	(ii) Subject Matter Exclusions	213
	<i>Hesperides Hotels Ltd. v. Muftizade</i>	215
	Notes and Questions	220
(b)	Other Restrictions on Taking Jurisdiction	223
	(i) <i>Forum Inconveniens</i>	223
	<i>Moreno v. Norwich Union Fire Insurance Society Ltd.</i>	224
	Notes	227
	<i>Spiliada Maritime Corp. v. Cansulex Ltd.</i>	227
	Notes	242
	(ii) Contractual Limits on Forum Selection	243
(c)	Sevice <i>Ex Juris</i>	244
	Ontario Rules of Civil Procedure	245
	<i>Moran v. Pyle National (Canada) Ltd.</i>	248
	<i>Robinson v. Warren</i>	257
	Notes	259
	Note on Actions and Judgments <i>In Rem</i>	260
(d)	Mareva Injunctions	261
	<i>Mareva Compania Naviera S.A. v. International Bulk Carriers S.A.</i>	261
	<i>Derby &amp; Co. Ltd. v. Weldon et al. (No. 4)</i>	265
	<i>Aetna Financial Services v. Feigelman</i>	275
	Notes	285
(e)	Anti-suit Injunctions	285
	<i>Amchem Products Inc. et al. v. Workers' Compensation Board et al.</i>	286



Notes and Questions .....	295
<b>3. The Constitutional Component .....</b>	<b>295</b>
<i>World-Wide Volkswagen Corp. v. Woodson</i> .....	296
Questions and Notes .....	305

## Chapter 7

### Recognition and Enforcement of Foreign Judgments

<b>Introduction .....</b>	<b>309</b>
<b>1. Recognition and Enforcement; The Common Law Rules .....</b>	<b>310</b>
<i>Henry v. Geoprosco International Ltd.</i> .....	319
Notes .....	320
<i>De Savoye v. Morguard Investments Limited et al</i> .....	327
Notes and Questions .....	344
<i>Clarke v. Bianco</i> .....	344
Notes .....	350
<b>2. Judgments that will be Refused Enforcement .....</b>	<b>357</b>
(a) Public Policy .....	357
(b) Foreign Tax Claims .....	357
(c) Foreign Penal Claims .....	358
<i>Huntington v. Attrill</i> .....	358
Note .....	361
(d) Foreign Judgments Concerning Land .....	362
<i>Duke v. Andler</i> .....	362
Questions and Notes .....	365
<b>3. Statutory Provisions and International Agreements .....</b>	<b>367</b>
(a) Provincial Statutes .....	367
(i) Reciprocal Enforcement Legislation .....	367
<i>Reciprocal Enforcement of Judgments Act</i> .....	367
<i>Uniform Enforcement of Canadian Judgments Act</i> .....	371
Note .....	374
(ii) Arbitration Awards .....	374

(iii)	Other provincial Legislation .....	378
(b)	Canadian Statutes and International Agreements .....	380